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August 15, 2006

VIA FIRST CLASS MAIL

Philip N. Hogan, Chairman
National Indian Gaming Commission
1441 L Street, NW, Suite 9100
Washington, DC 2005

Re: Comments of Miccosukee Tribe of Indians of Florida concerning Class II Classification Standards and Electromechanical Facsimile Definitions

Dear Chairman Hogan and Vice Chairman Choney:

I write on behalf of the Miccosukee Tribe of Indians of Florida to comment on the NIGC's proposed rules for Class II Standards and Definitions. As in the past, our Tribe is concerned with the manner in which the NIGC has developed these regulations. The current rulemaking process lacked meaningful consultation with Indian Tribes. Notwithstanding the fact the the NIGC assembled a tribal advisory committee (TAC) to participate in the process, the committee *was not* invited to participate in drafting the proposed regulations and little if any of the TAC's input has been incorporated into the NIGC's proposed rules. Equally troubling, Tribal comments submitted to the NIGC during the drafting process were never made public by the NIGC and it is unclear if any of the comments were even considered during the drafting process. We urge you to implement mechanisms that give the views of Indian tribes the weight they deserve.

The NIGC must comply with its own consultation policy and engage in meaningful government to government negotiations with tribes. The NIGC should also hold public hearings on the regulations with comments and submissions recorded as part of the administrative record. Otherwise, consultation becomes meaningless as a concept, and the tribes become disassociated from, and disillusioned with, the process.

We ask that the agency refrain from placing arbitrary restraints on class II gaming. Although we have no strong objection to removing the term "house banked" from the definition of a "game similar to bingo," we oppose the proposed definition of "eletrocmechanical facsimile." We disagree with the NIGC's claim that bingo, lotto, and other games similar to bingo, are "facsimiles" when played in an electronic medium. The current definition is clear on its face, so long as the electronic format broadens participation among players and is not played against the machine, such games are *not*

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facsimiles. Please delete the proposed re-definition. (See Proposed Rule at § 502.8). This issue is very important to the Miccosukee Tribe of Indians.

The classification standards are both arbitrary and contrary to established case law. Please delete the proposed restrictions on the game display, ball draw, daubing, prize amounts, and player interaction. These new requirements, rather than clarifying the existing regulations, appear to repudiate most variants of bingo, slows the play of those that remain, and prevents any meaningful electronic play of pull tabs. They are only designed to hinder the flow of the game.

For example, without any statutory or case law authority, the regulations impose additional restrictions on pull tabs. Under the proposal, the player terminal may neither accumulate credits nor award cash. A player must, therefore, redeem any pull-tab winnings through a clerk or kiosk, and cannot merely transfer credit between machines. This restriction greatly hinders player flexibility and the use of current cashless technology. It does nothing to improve security of the game experience of the patrons.

We also object to the redefinition of the statutory term "game of bingo." In enacting IGRA, Congress placed only three requirements on a game of bingo. Notably, the federal courts had continuously held that these three requirements "constitute the sole *legal* requirements for a game to count of class II bingo." The NIGC's current imposition of additional requirements prohibits the growth of class II gaming and micromanages tribal business judgment and regulatory responsibilities. The proposed regulations would eliminate virtually all games that Congress intended to allow as "similar to bingo." The following proposed provisions place arbitrary restrictions on bingo and games similar to bingo and must be deleted:

1) the required use of five by five grid cards (25 spaced) (§ 546.4(c));

2) games can only use ball draws numbered from 1 through 75 (§ 546.5(a));

3) elimination of "pre-drawn" balls (if allowed to become law, this would prohibit the electronic play of "Bonanza Bingo," even as a game similar to bingo);

4) mandatory time periods (2 seconds) to play of the bingo game (a requirement wholly unsupportable under current law) (§ 546.5(i));

5) the requirement for multiple ball releases; the releases may not be instantaneous, and each release must take two seconds (§ 546.6(c));

6) the elimination of auto-daub and requirement for two seconds of daub time before the next release is permitted (§ 546.5(i)).

We are also concerned that the regulations fail to resolve the basic problems associated with the NIGC's game classification process and omit a meaningful role for tribal regulators. Under the proposed regulations, independent gaming laboratories, as licensed by the Commission, would certify games as complying with the regulations. Without "grandfathering," few, if any, existing games would comply with the proposed regulations, even those already approved by courts or by the NIGC itself. In the interests of fairness, the NIGC should permanently "grandfather" all of the games it has approved as well as the gamed that the Federal Courts have approved. As drafted, the proposed Rule would greatly harm our Tribe.

Finally, under the proposed rules, only the NIGC Chairman may object to a classification decision. Tribes have no such option, except in defense of an enforcement action. Laboratories must be approved annually, and may lose that approval if the NIGC is dissatisfied with their certification decisions. As the primary regulators of class II gaming, Tribes should be afforded the opportunity to challenge such an opinion on a government-to-government basis, without having to first subject itself to enforcement action.

In sum, the regulations arbitrarily redefine established regulatory terms and limit what Congress clearly intended to permit. Under IGRA, Congress clearly permits the use of electronic equipment, or "technologic aids," in the play of class II games. Legislative history shows that Congress was alert to the fact that technology would continue to advance, and that class II gaming likewise should be allowed to evolve and grow through technological advancement. As noted in the Senate report: "The Committee intends that tribes be given the opportunity to take advantage of modern methods of conducting class II games and the language regarding technology is designed to provide maximum flexibility."

The NIGC should honor both the spirit and the language of IGRA, the Tribes' hard-fought federal court victories, and the NIGC's own regulatory framework: most prominently, the current 2002 definition regulations. We urge the NIGC to give these comments serious consideration and to refrain from placing unwarranted restrictions on class II gaming.

Very truly yours,

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General Counsel

CR/jr